

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID T. GILCHRIST and LEANNE L.  
GILCHRIST,

Plaintiffs,

v.

BANK OF AMERICA N.A., BAC  
HOME LOANS SERVICING LP, MERS,  
INC., MERSCORP, INC., FHLMC  
FREDDIE MAC, MANN MORTGAGE,  
LLC, MANN FINANCIAL, INC.,  
WITHERSPOON KELLEY,  
CHRISTOPHER G VARALLO,

Defendants.

CASE NO. C14-5062 RJB

ORDER DENYING MOTION FOR  
RECONSIDERATION

This matter comes before the court on plaintiffs' motion for reconsideration. Dkt. 43.  
The court has considered the motion and the remainder of the file herein.

On January 21, 2014, plaintiffs filed a civil complaint to which numerous documents  
were attached. Dkt. 1.

1 On March 26, 2014, defendants Witherspoon Kelly and Christopher G. Varallo filed a  
2 motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6). Dkt. 13. On April 1, 2014, the court issued  
3 a notice to plaintiffs, informing them of the legal standard regarding motions to dismiss, and  
4 permitted plaintiff the opportunity to file counter affidavits or other responsive evidentiary  
5 materials, as appropriate, in response to the motion to dismiss. Dkt. 20.

6 The remaining defendants filed motions to dismiss. Dkt. 21 and 24.

7 On April 18, 2014, Witherspoon Kelly and Christopher G. Varallo were dismissed as  
8 defendants, pursuant to a stipulation. Dkt. 34 and 35.

9 Plaintiffs filed responses (Dkt. 36 and 37) to the pending motions to dismiss, and attached  
10 numerous documents and additional evidence to their response to the BANA defendants' motion  
11 to dismiss. Dkt. 36.

12 On May 5, 2014, the court granted the motions to dismiss of the remaining defendants.  
13 Dkt. 42. In the order, the court stated that it declined to rely on the documents plaintiffs  
14 provided in their response "because most of the information therein was included in Plaintiffs'  
15 complaint and it would not be appropriate at this state of the proceedings." Dkt. 42, at 5.

16 On May 15, 2014, plaintiffs filed a motion for reconsideration of the May 5, 2014 order  
17 granting the remaining defendants' motions to dismiss. Dkt. 43. Plaintiffs contend that the  
18 Supreme Court has determined that *pro se* pleadings may never be dismissed for failure to state a  
19 claim; that the court acted outside its jurisdiction in deciding facts in controversy; that the court  
20 may not dismiss a *pro se* complaint on attorneys' arguments alone; that the complaint with  
21 attached exhibits supports plaintiffs' claim that BANA was the alleged servicer; and that the  
22 exhibits attached to plaintiffs' complaint were sufficient to support the allegations in the  
23 complaint. Dkt. 43.

1 Pursuant to Local Rules W.D. Wash. CR 7(h)(1), motions for reconsideration are  
2 disfavored, and will ordinarily be denied unless there is a showing of (a) manifest error in the  
3 ruling, or (b) facts or legal authority which could not have been brought to the attention of the  
4 court earlier, through reasonable diligence. The term “manifest error” is “an error that is plain  
5 and indisputable, and that amounts to a complete disregard of the controlling law or the credible  
6 evidence in the record.” *Black's Law Dictionary* 622 (9th ed. 2009).

7 Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of  
8 finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
9 877, 890 (9th Cir. 2000). "[A] motion for reconsideration should not be granted, absent highly  
10 unusual circumstances, unless the district court is presented with newly discovered evidence,  
11 committed clear error, or if there is an intervening change in the controlling law." *Marlyn*  
12 *Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Neither  
13 the Local Civil Rules nor the Federal Rule of Civil Procedure, which allow for a motion for  
14 reconsideration, is intended to provide litigants with a second bite at the apple. A motion for  
15 reconsideration should not be used to ask a court to rethink what the court had already thought  
16 through — rightly or wrongly. *Defenders of Wildlife v. Browner*, 909 F.Supp. 1342, 1351  
17 (D. Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for  
18 reconsideration, and reconsideration may not be based on evidence and legal arguments that  
19 could have been presented at the time of the challenged decision. *Haw. Stevedores, Inc. v. HT &*  
20 *T Co.*, 363 F.Supp.2d 1253, 1269 (D. Haw. 2005). Whether or not to grant reconsideration is  
21 committed to the sound discretion of the court. *Navajo Nation v. Confederated Tribes & Bands*  
22 *of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

1 It is unclear whether plaintiffs believe that the court should not have considered the  
2 documents attached to their complaint in ruling on the motions to dismiss, or if they believe that  
3 the court should have converted the motions to motions for summary judgment. See Dkt. 43, at  
4 3. In any event, any such arguments are without merit. A court may consider material which is  
5 properly submitted as part of the complaint on a motion to dismiss without converting into a  
6 motion for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). A  
7 court may consider evidence on which the complaint ‘necessarily relies’ if: (1) the complaint  
8 refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party  
9 questions the authenticity of the copy attached to the Fed.R.Civ.P. 12(b)(6) motion. *Marder v.*  
10 *Lopez*, 450 F.3d 445, 448 (9th Cir.2006). A court may treat such a document as “part of the  
11 complaint, and thus may assume that its contents are true for purposes of a motion to dismiss  
12 under Rule 12(b)(6).” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003). See *Parrino v.*  
13 *FHP, Inc.*, 146 F.3d 699, 706 (9<sup>th</sup> Cir. 1998). In this case, it was not improper for the court to  
14 consider documents plaintiffs attached to their complaint.

15 Plaintiffs have not shown manifest error in the ruling, or facts or legal authority which  
16 could not have been brought to the attention of the court earlier, through reasonable diligence.  
17 They disagree with the court’s conclusion, after the court carefully reviewed the record, that the  
18 CPA claim and the claim for breach of the covenant of good faith and fair dealing are barred by  
19 the statute of limitations; that the remaining claims fail to state a claim for relief; and that  
20 amendment of the complaint would be futile. Plaintiffs’ motion for reconsideration should be  
21 denied.

1 Accordingly, it is hereby **ORDERED** that plaintiffs' motion for reconsideration (Dkt. 43)  
2 is **DENIED**.

3 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
4 to any party appearing *pro se* at said party's last known address.

5 Dated this 21<sup>st</sup> day of May, 2014.

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8 ROBERT J. BRYAN  
9 United States District Judge  
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